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CALIFORNIA, ex rel. Maureen Gorsen, Director,
California Department of Toxic Substances Control
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11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF LOS ANGELES
13

14 **PEOPLE OF THE STATE OF CALIFORNIA, ex**
15 **rel. Maureen Gorsen, Director, California**
16 **Department of Toxic Substances Control,**

17 Plaintiff,

18 v.

19 **West Valley Plating, a California Corporation, &**
Does 2 to 10,

20 Defendant.
21

CASE NO. BC 339168

STIPULATION FOR
SETTLEMENT AND ENTRY OF
JUDGMENT AND INJUNCTION
(Calif. Health and Safety Code
sections 25189 and 25189.2)

22 Plaintiff, People of the State of California, ex rel. Maureen Gorsen, Director, Department
23 of Toxic Substances Control ("the Department"), and Defendant West Valley Plating ("West
24 Valley") enter into this Stipulation for Settlement and Entry of Judgment and Injunction
25 ("Stipulation") and stipulate as follows:

26 **1. THE COMPLAINT**

27 a. On August 31, 2005, the People of the State of California filed a
28 Complaint for Civil Penalties and Injunctive relief pursuant to the California Hazardous Waste
Control Law, Health and Safety Code sections 25100 et seq. ("HWCL") against West Valley as

1 an owner and operator of the facility at 18351 Eddy Street, Unit B, in the Northridge area of Los
2 Angeles, California (the "Facility").

3 **2. JURISDICTION**

4 The Department and West Valley agree this Court has subject matter jurisdiction over the
5 matters alleged in the Complaint and personal jurisdiction over West Valley.

6 **3. WAIVER OF HEARING AND TRIAL AND ENTRY OF JUDGMENT**

7 By signing and entering into this Stipulation, West Valley waives its right to a hearing
8 and/or trial under the Health and Safety Code on the alleged violations in the Complaint.
9 Further, West Valley and the Department request this Court to enter Judgment in the form and
10 substance set forth in Attachment A to this Stipulation ("the Judgment").

11 **4. SETTLEMENT**

12 The Department and West Valley jointly enter into this Stipulation pursuant to a
13 compromise and settlement of disputed claims for the purpose of avoiding prolonged and
14 complicated litigation and furthering the public interest. Time is of the essence in this
15 Stipulation.

16 **5. CIVIL PENALTY**

17 a. West Valley admits the violations alleged in the Complaint and agrees that
18 the Court may adjudge a civil penalty in the amount of \$180,000.

19 b. West Valley has represented, certified and provided supporting evidence
20 1) that West Valley does not have the financial resources to pay the penalty in this matter, 2)
21 that in response to this action West Valley stopped using plating baths containing cyanide in its
22 operation, and 3) in early 2006, through no fault of its own, West Valley lost a significant
23 customer. In reliance on West Valley's representations and certifications, the Department agrees
24 that – provided that West Valley does not violate any of the injunctive provisions specified in
25 section 6 herein and does not default on any payment obligation specified in section 7 herein –
26 the Department will deem the civil penalty portion of the Judgment satisfied.

27 c. If, within four years of the effective date of the Stipulation, West Valley
28 violates one of the injunctive provisions specified in section 6 herein or defaults on the payment

1 obligation specified in section 7 herein, the entire unpaid balance of the \$180,000 penalty shall
2 be due and owing and the Department may enforce that in all manners provided by Title 9 of
3 Part 2 of the Code of Civil Procedure. This paragraph (5.c.) does not delay or waive, in any way,
4 West Valley's obligation to comply with any of the provisions of this Stipulation, nor does it
5 eliminate any other authority the Department has to enforce the Judgment, the HWCL, its
6 regulations or the terms of any license or permit given thereunder.

7 d. For the purpose of this section, West Valley retains the right to contest
8 DTSC's claim that it violated one of the injunctive provisions and therefore has defaulted on
9 this Stipulation and Judgment

10 e. For the purpose of this section, West Valley shall be deemed to be in
11 default of the payment obligation specified in section 7 herein if at the time a quarterly payment
12 is due West Valley has not made all payments that were due as of the prior due date (one quarter
13 earlier). Nothing in this section precludes West Valley from requesting, or the Department from
14 granting, an extension of the date a penalty is due. West Valley shall make any such request at
15 least two weeks prior to the due date. No extension of the due date shall be deemed effective
16 unless and until given in writing by the Department.

17 **6. INJUNCTIVE PROVISIONS**

18 a. West Valley shall comply with California Code of Regulations, title 22,
19 section 66265.192.

20 b. Within twenty-one days of the Effective Date, West Valley shall adopt
21 and submit to the Department a waste analysis plan. The plan shall provide that West Valley
22 sample each tank that is a generation point for hazardous waste and that the sampling will be
23 complete within thirty-five days of the Effective Date. The plan must comply with California
24 Code of Regulations, title 22, section 66265.13. West Valley shall thereafter remain in
25 compliance with section 66265.13.

26 c. Within twenty-one days of the Effective Date of this Stipulation, West
27 Valley shall revise its tank inspection form and submit that plan to the Department. The revised
28 form shall include pipes from the process tanks to the sumps and comply with California Code of

1 Regulations, title 22, sections 66265.15 and 66265.73. West Valley shall thereafter remain in
2 compliance with sections 66265.15 and 66265.73.

3 d. Within twenty-one days of the Effective Date of this Stipulation, West
4 Valley shall submit to the Department a management plan for removing or otherwise “closing”
5 all hazardous waste contaminated equipment that West Valley has taken out of service in the last
6 year, including, but not limited to, equipment used for the treatment of cyanide waste. The
7 management plan must demonstrate that West Valley has complied or will comply with the
8 closure requirements of California Code of Regulations, title 22, sections 66265.111. West
9 Valley shall thereafter remain in compliance with section 66265.111.

10 e. West Valley shall not store or treat any cyanide-containing hazardous
11 waste without prior authorization from the Department. West Valley shall not seek such
12 authorizations within three years of entry of this judgment by the Court.

13 **7. PAYMENTS TO THE DEPARTMENT**

14 a. Over the course of three and three quarter years, West Valley shall make
15 quarterly payments to the Department in the following amounts: West Valley shall make two
16 quarterly payments of \$1,500 each, followed by four quarterly payments of \$2,250 each,
17 followed by eight quarterly payments of \$3,000 each, followed by two quarterly payments of
18 \$4,500 each. These payments amount to a total of \$45,000.

19 b. The first quarterly payment shall be due within ten days of the Effective
20 Date of this Stipulation. The second quarterly payment shall be due three months after the
21 Effective Date of this Stipulation on the same day of the month as the Effective Date of this
22 Stipulation. Upon receiving from the Department the payment vouchers consistent with this
23 payment schedule, West Valley shall include a payment voucher with each payment.

24 c. In the event West Valley sells its facility, all remaining payments under
25 this section shall be immediately due and payable.
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1 **8. MANNER OF MAKING PAYMENTS**

2 a. All payments required pursuant to this Stipulation shall be made by wire
3 transfer or by certified or cashier's check, payable to the Department of Toxic Substances
4 Control and shall bear the following notation: "West Valley Plating, Site Code 601114."

5 b. West Valley shall send all payments to:
6 Department of Toxic Substances Control
7 Accounting Office
8 1001 I Street
9 P.O. Box 806
10 Sacramento, CA 95812-0806
11 Attention: Karen Poon.

12 A copy of all payments shall be sent to :

13 Charles A. McLaughlin, Chief
14 State Oversight and Enforcement Branch
15 Department of Toxic Substances Control
16 8800 Cal Center Drive
17 Sacramento, California 95826-3200

18 Vivian Murai, Staff Counsel
19 Office of Legal Counsel
20 Department of Toxic Substances Control
21 P.O Box 806
22 Sacramento, California 95812-0806

23 If payment is by wire transfer, West Valley shall utilize the California Treasurer's Wire
24 Transfer program and send hard copy notification of payments to Mr. Charles A. McLaughlin
25 and Ms. Vivian Murai at the addresses above.

26 c. Where a due date falls on a Saturday, Sunday or on a federal or state
27 holiday, then the due date shall be the close of business on the next working day.

28 **9. NOTICE**

 a. Unless otherwise specified in this Stipulation, all submissions and notices
required by this Stipulation shall be sent as follows:

For the Department:

Charles A. McLaughlin, Chief
State Oversight and Enforcement Branch
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

Vivian Murai, Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control
P.O Box 806
Sacramento, California 95812-0806

For West Valley:

b. All approvals and decisions of the Department regarding any matter requiring approval or decision under the terms of this Stipulation shall be communicated to West Valley in writing by Charles A. McLaughlin or his successor or designee. No advice, guidance, suggestions or comments by employees or officials of the Department regarding submittals or notices shall be construed to relieve West Valley of its obligations under this Stipulation, except as specified herein.

c. The Department intends to respond in a timely manner to all submissions required by this Stipulation. This paragraph shall not create a right of action against the Department or any government official, nor create any defense to any enforcement action brought by the Department or any other government agency.

10. SCOPE OF THIS STIPULATION AND JUDGMENT

a. This Stipulation shall constitute full settlement of the causes of action of the Complaint numbered One through Nine. This Stipulation does not settle any other violation of the HWCL or of any other law, nor restrict in any way the Department from taking appropriate enforcement action concerning any violations not specifically settled in this Stipulation.

b. Except as expressly provided herein, nothing in this Stipulation shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of West Valley, including, but not limited to, all rights the Department may have to compel West Valley to take, and/or pay the costs, of corrective action, removal actions, remedial actions or other environmental response actions.

1 Nothing in this Stipulation is intended nor shall it be construed to preclude the Department or
2 any other government agency, department, board or entity from exercising its authority under
3 any law, statute or regulation.

4 c. This Stipulation and Judgment shall apply to and be binding upon the
5 Department and West Valley and its officers, employees, agents, successors and assigns,
6 including executors and/or trustees of West Valley. West Valley shall give notice of this
7 Stipulation to any person or entity engaged in, or who will engage in, hazardous waste
8 management at the Facility.

9 d. There are no Third Party Beneficiaries to this Agreement.

10 **11. ENFORCEMENT OF THIS STIPULATION AND JUDGMENT**

11 a. West Valley shall promptly, and no later than twenty-four hours after
12 discovery, notify the Department in writing in the event of any significant noncompliance with
13 the terms of this Stipulation. Failure to comply with this paragraph 11.a. shall not be deemed an
14 independent violation of this Stipulation or of the HWCL.

15 b. Except as otherwise authorized by law, the Department will notify West
16 Valley at least two weeks before acting to enforce the injunctive provisions of the Stipulation.
17 Upon a request by the West Valley, the Department will make appropriate staff persons available
18 to meet with representatives of the West Valley within a reasonable time of sending out the
19 notice. Provided the meeting takes place within a reasonable time, the Department will not
20 commence the enforcement action until the meeting has taken place. For the purposes of this
21 paragraph, "acting to enforce the compliance conditions of the Stipulation" are limited to
22 issuance of a corrective action order pursuant to Health and Safety Code section 25187, the filing
23 of a civil complaint, or the commencement of a contempt action. This paragraph shall not
24 prevent the Department or any government official from taking any action the Department or
25 official deems necessary to protect public health or the environment. This paragraph shall not
26 create a right of action against the Department or any government official, nor create any defense
27 to any enforcement action brought by the Department or any other government agency.
28

1 c. Failure to comply with the terms of this Stipulation or of the Judgment
2 may also subject West Valley to costs, penalties, and/or punitive damages for any costs incurred
3 by the Department or other government agencies as a result of such failure, including penalties
4 provided by Health and Safety Code section 25188. Penalties due for violation of under this
5 Stipulation because of a new violation of the HWCL are in addition to, and not in lieu of, any
6 new penalty assessed for that new violation.

7 d. The Department's failure to seek enforcement of any provision of this
8 Stipulation shall not be deemed a waiver of any rights by the Department, or in any way affect
9 the validity of this Stipulation or the Judgment as to West Valley in this matter.

10 e. Nothing in this Stipulation or the Judgment waives any right or authority
11 the Department has under law to enforce the provisions of the Department has to enforce the
12 Stipulation, the Judgment, the HWCL, its regulations or the terms of any license or permit given
13 thereunder.

14 **12. DEPARTMENT NOT LIABLE**

15 a. The Department shall not be liable for any injury or damage to persons or
16 property resulting from acts or omissions by West Valley, its officers, employees, agents, or
17 representatives in carrying out obligations pursuant to this Stipulation, nor shall the Department
18 be held as a party to or guarantor of any contract entered into by West Valley, its employees,
19 agents, or representatives in carrying out obligations required pursuant to this Stipulation.

20 b. West Valley releases the Department and the Office of the Attorney
21 General, and its employees, representatives and agents from any and all liability, in its official or
22 personal capacity, arising from or relating to this litigation or any inspection, enforcement or
23 permitting activity, or other regulatory action occurring up to the date of the execution of this
24 Stipulation. West Valley further covenants not to sue or assert any claims or causes of action
25 against the Department or the Office of the Attorney General, or its officers, employees, agents,
26 or representatives in their official or personal capacities arising from or relating to this litigation
27 or any inspection, enforcement or permitting activity, or other regulatory action occurring up to
28 the date of the execution of this Stipulation.

1 **13. AUTHORITY TO ENTER STIPULATION**

2 Each signatory to this Stipulation certifies that he or she is fully authorized by the party
3 he or she represents to enter into this Stipulation, to execute it on behalf of the party represented
4 and legally to bind that party.

5 **14. RETENTION OF JURISDICTION**

6 The Court shall retain jurisdiction to enforce the provisions of this Stipulation and
7 Judgment.

8 **15. COMPLIANCE WITH APPLICABLE LAWS**

9 West Valley shall carry out their obligations in this Stipulation in compliance with all
10 local, state and federal requirements, including but not limited to requirements to obtain permits
11 and to assure worker safety.

12 **16. REQUIREMENTS OF THE DEPARTMENT**

13 The duties imposed on West Valley by this Stipulation shall be construed to be
14 requirements of the Department issued pursuant to the HWCL.

15 **17. INTEGRATION**

16 This Stipulation constitutes the entire agreement between the Department and West
17 Valley regarding the matters specifically covered herein. This Stipulation may not be amended
18 or supplemented except as provided for herein. The parties hereto acknowledge that there are no
19 representations, agreements, or understandings relating to this Stipulation other than those
20 expressly contained herein.

21 **18. EQUAL AUTHORSHIP**

22 This Stipulation and all of its provisions shall be deemed to have been drafted equally by
23 all parties hereto.

24 **19. REQUESTS FOR EXTENSIONS OF TIME**

25 West Valley may apply to the Department, in writing, for an extension of any of the time
26 periods specified in this Stipulation. The Department may grant West Valley' request if just
27 cause is shown and if the extension will not pose a threat to public health or the environment.

28 **20. AMENDMENTS TO STIPULATION AND JUDGMENT**

1 Except as to extensions of time pursuant to section 19, this Stipulation may only be
2 amended pursuant to a written agreement signed by all parties to the Stipulation followed by
3 written approval of this Court. In the event changes are made to the HWCL, or its regulations, to
4 RCRA, or its regulations, or to West Valley's authorization that would make legal any activity
5 prohibited by this agreement, the parties may petition the court together or singularly to modify
6 the judgment. The parties agree to work in good faith to resolve any such claims.

7 **21. COUNTERPART ORIGINALS**

8 This Stipulation may be executed in several counterpart originals, all of which taken
9 together shall constitute an integrated document.

10 **22. EFFECTIVE DATE**

11 The Effective Date of this Stipulation is the date the Judgment is entered by the Court.

12 **23. ENTRY OF JUDGMENT PURSUANT TO STIPULATION**

13 The parties further stipulate that upon approval of this Stipulation by the Court, the Court
14 shall enter the Judgment in this matter in the form set forth in Attachment A hereto.

15 IT IS SO STIPULATED:

16
17 Dated: August 21, 2006

By: Original signed by Charles A. McLaughlin
Charles A. McLaughlin, Chief
State Oversight and Enforcement Branch
Department of Toxic Substances Control

18
19
20 Dated: August 15, 2006

By: Original signed by Josefina Campos
Josefina Campos, President
West Valley Plating

21
22 APPROVED AS TO FORM:

23
24 BILL LOCKYER, Attorney General
25 of the State of California

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27 Dated: August 17, 2006 By: Original signed by James R. Potter

JAMES R. POTTER
Attorneys for Plaintiffs,

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Law Offices of Kenneth Roberts

Dated: August 15, 2006 By: Original signed by Kenneth Roberts
KENNETH ROBERTS
Attorneys for West Valley

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6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 IN AND FOR THE COUNTY OF LOS ANGELES
8

9 **PEOPLE OF THE STATE OF CALIFORNIA, ex**
10 **rel. Maureen Gorsen, Director, California**
11 **Department of Toxic Substances Control,**
12
13 **Plaintiff,**
14
15 **v.**
16 **West Valley Plating, a California Corporation, &**
17 **Does 2 to 10,**
18 **Defendant.**

CASE NO. BC 339168

JUDGMENT AND
INJUNCTION PURSUANT TO
STIPULATION

(Calif. Health and Safety Code
sections 25181, 25189 and
25189.2; Code of Civil Procedure
section 664.6)

16
17 Plaintiff, People of the State of California ex rel. Maureen Gorsen, Director, California
18 Department of Toxic Substances Control presented and filed with the Court a written Stipulation for
19 Entry of Final Judgment (the "Stipulation," which is attached hereto as Exhibit A and incorporated
20 by reference) entered by the People and Defendant West Valley Plating. The Court, having
21 reviewed the Stipulation and the other pleadings and records on file, prior to the taking of any proof
22 and without trial or adjudication of any fact or law herein, and that good cause exists for entry of this
23 Judgment.

24 IT IS HEREBY ORDERED, ADJUDGED and DECREED, as follows:

25 1. Jurisdiction exists over this matter pursuant to Health and Safety Code sections
26 25181, 25189, that venue is proper pursuant to Health and Safety Code section 25183.

27 2. JUDGMENT is awarded in favor of Plaintiff and against West Valley Plating on all
28 causes of action; that a civil penalty is awarded against West Valley Plating in the amount of
\$180,000;

1 3. The provisions of this Judgment, and the underlying Stipulation for Settlement and
2 Entry of Judgment and Injunction (which is attached hereto and incorporated by reference into this
3 Judgment as Exhibit "A") shall apply to and be binding upon Defendant and its officers, directors,
4 agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, and upon
5 the Plaintiffs and any successor agencies of the Plaintiffs that may have responsibility for and
6 jurisdiction over the subject matter of this Judgment.

7 4. IT IS FURTHER ORDERED that West Valley shall comply with the following
8 Injunctive and Compliance Schedule provisions:

9 a. West Valley shall comply with California Code of Regulations, title 22,
10 section 66265.192.

11 b. Within twenty-one days of the Effective Date of the Stipulation, West Valley
12 shall adopt and submit to the Department a waste analysis plan. The plan shall provide that West
13 Valley sample each tank that is a generation point for hazardous waste and that the sampling will
14 be complete within thirty-five days of the Effective Date. The plan must comply with California
15 Code of Regulations, title 22, section 66265.13. West Valley shall thereafter remain in compliance
16 with section 66265.13.

17 c. Within twenty-one days of the Effective Date of the Stipulation, West Valley
18 shall revise its tank inspection form and submit that plan to the Department. The revised form shall
19 include pipes from the process tanks to the sumps and comply with California Code of Regulations,
20 title 22, sections 66265.15 and 66265.73. West Valley shall thereafter remain in compliance with
21 sections 66265.15 and 66265.73.

22 d. Within twenty-one days of the Effective Date of the Stipulation, West Valley
23 shall submit to the Department a management plan for removing or otherwise "closing" all
24 hazardous waste contaminated equipment that West Valley has taken out of service in the last year,
25 including, but not limited to, equipment used for the treatment of cyanide waste. The management
26 plan must demonstrate that West Valley will comply the closure requirements of California Code
27 of Regulations, title 22, sections 66265.111. West Valley shall thereafter remain in compliance with
28 section 66265.111.

1 e. West Valley shall not store or treat any cyanide-containing hazardous waste
2 without prior authorization from the Department. West Valley shall not seek such authorizations
3 within three years of entry of this judgment by the Court.

4 **OTHER PROVISIONS**

5 5. **Retention of Jurisdiction.** The Court shall retain jurisdiction of this matter to
6 implement this Judgment.

7 6. **Enforcement of Judgment.** Any party may, by motion or order to show cause
8 before the Superior Court of Los Angeles County, enforce the terms and conditions contained in this
9 Judgment. Where a failure to comply with this Judgment constitutes future violations of the
10 Hazardous Waste Control Law, Health and Safety Code section 25100 et seq., Water Codes section
11 13350 *et seq.*, or other laws, independent of this Judgment and/or those alleged in the Complaint,
12 the Plaintiff is not limited to enforcement of this Judgment, but may seek in another action, subject
13 to satisfaction of any procedural requirements, including notice requirements, whatever fines, costs,
14 fees, penalties or remedies are provided by law for failure to comply with the Hazardous Waste
15 Control Law or other laws.

16 7. **Entry of Judgment.** The Clerk of the Court is ordered to enter this Judgment.

17
18 DATED: September 6, 2006

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20 Original signed by James R. Dunn

21 HON.

22 JUDGE OF THE SUPERIOR COURT
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1 Prepared by:
2 BILL LOCKYER, Attorney General
of the State of California
3 TOM GREENE
Chief Assistant Attorney General
4 THEODORA BERGER,
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